

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION  
OPIATE LITIGATION**

THIS DOCUMENT RELATES TO:  
*All Cases*

MDL NO. 2804

Civ. No. 1:17-md-02804-DAP

HON. JUDGE DAN A. POLSTER

**AMERISOURCEBERGEN DRUG CORPORATION’S MOTION FOR  
LEAVE TO FILE A SUPPLEMENTAL SUR-REPLY IN FURTHER OPPOSITION  
TO PLAINTIFFS’ MOTION TO COMPEL AND FOR SANCTIONS**

AmerisourceBergen Drug Corporation (“ABDC”) hereby seeks leave to file a short, 8-page sur-reply in further opposition to Plaintiffs’ Motion to Compel and for Sanctions to respond to new factual assertions and arguments raised in Plaintiffs’ Reply to ABDC’s Supplemental Response Pursuant to the Court’s June 17, 2020 Order (“Plaintiffs’ Supplemental Reply”) (ECF No. 3376). The sur-reply that ABDC seeks leave to file is attached hereto as Exhibit A.

There is good reason to permit the sur-reply. Plaintiffs’ Supplemental Reply adds new factual allegations in support of their sanctions request and advances new arguments for the very first time. These include new arguments about prior discovery rulings in the case and new theories of alleged wrongdoing. ABDC should be permitted to respond to Plaintiffs’ new contentions and explain why they are baseless, especially in the context of a motion for sanctions filed against it.

Courts routinely grant leave for non-movants to file a sur-reply, particularly where—as here—the movant has raised issues for the first time in a reply brief. *See, e.g., Eldridge v. Cardif Life Ins. Co.*, 266 F.R.D. 173, 175 (N.D. Ohio 2010) (“This Court grants leave to file a sur-reply to afford a party an opportunity to address new issues raised for the first time in the reply.”);

*Ferguson v. Lorillard Tobacco Co., Inc.*, 475 F. Supp. 2d 725, 728 n.4 (N.D. Ohio 2007) (same);  
*Elliott Co. v. Liberty Mut. Ins. Co.*, 239 F.R.D. 479, 480 n.1 (N.D. Ohio 2006) (same).<sup>1</sup>

Dated: July 13, 2020

Respectfully submitted,

/s/ Robert A. Nicholas

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<sup>1</sup> This Court has consistently allowed parties' to file sur-replies in such circumstances. *See* Order [non document] granting Endo's Motion for leave to File Instanter Sur-Reply (Feb. 4, 2019); Order granting Plaintiffs' Motion for Leave to File Sur-Reply (Aug. 21, 2019) (ECF No. 2499); Order [non document] granting Pharmacies' Motion for leave to file a surreply (Nov. 15, 2019).

**CERTIFICATE OF SERVICE**

I hereby certify that, on July 13, 2020, AmerisourceBergen Drug Corporation's Motion for Leave to File a Supplemental Sur-Reply in Further Opposition to Plaintiffs' Motion to Compel and for Sanctions was served on all counsel of record via the CM/ECF system.

/s/ Robert A. Nicholas

Robert A. Nicholas